

Honorable Mary Alice Theiler

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

PROPET USA, INC.,

Plaintiff,

v.

LLOYD SHUGART,

Defendant.

Case No. C06-0186 MAT

DEFENDANT LLOYD SHUGART'S
SUPPLEMENTAL PROPOSED JURY
INSTRUCTIONS

Defendant Lloyd Shugart ("Mr. Shugart") hereby submits the forgoing Supplemental Proposed Jury Instructions as requested by the Court on September 20, 2007 (Docket No. 120).

CONTRACT FORMATION – GENERALLY

INSTRUCTION NO. ____

DEFENDANT’S PROPOSED LANGUAGE:

Contract formation requires a bargain in which there is an offer and a manifestation of assent to the exchange and consideration. In other words, a contract is formed when one party makes an offer and the other party accepts the offer.

An offer is the manifested willingness to enter into a bargain, inviting acceptance. An offer may invite acceptance to be made by performing a specific act; however, unless otherwise indicated, an offer invites acceptance by any medium that is reasonable in the circumstance. Thus, assent or agreement to a contract can take many forms.

CONTRACT FORMATION – ASSENT

INSTRUCTION NO. ____

DEFENDANT’S PROPOSED LANGUAGE:

Under Washington law, express assent to a license is not required. Thus, a signed contract is not always necessary. Instead, assent or acceptance can be manifested in a party’s actions.

A party can indicate agreement to a contract by breaking open the seal on a package stating the terms of a contract. A party may be bound by the terms of a “shrink-wrap” license by merely breaking open a package or breaking the seal.

CONTRACT FORMATION – “SHRINK-WRAP” LICENSE AGREEMENTS

INSTRUCTION NO. ____

DEFENDANT’S PROPOSED LANGUAGE:

“Shrink-wrap” licenses are seals affixed to the outside of a box or envelope which contain text of the license agreement.

The terms of a separate paper which is referred to on a license affixed to the outside of a box or container are enforceable against the party that opened it.